

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

No. 7:02-CR-31-1H
No. 7:16-CV-220-H

JOHN ORLANDO SINCLAIR,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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ORDER

This matter is before the court on petitioner's Notice of Withdrawal of Motion to Vacate. [DE #93]. Petitioner has also filed a motion for reconsideration pursuant to 18 U.S.C. § 3742(e), [DE #83], to which the government has not responded. The time for further filing has expired.

This matter was stayed pending the resolution of United States v. Brown, 868 F.3d 297, 298 (4th Cir. 2017), reh'g en banc denied, 891 F.3d 115 (4th Cir. 2018), cert. denied, 139 S. Ct. 14 (2018). [DE #92]. Subsequent to the Supreme Court's denial of certiorari on October 15, 2018, petitioner filed a Notice of Withdrawal of Motion to Vacate. [DE #93]. In light of Brown, the stay is hereby lifted.

Due to the unique procedural posture of this case and out of an abundance of caution, the court construes petitioner's filing as a motion to voluntarily dismiss his claims without prejudice pursuant to Rule 41(a)(2). There being no objection, the court GRANTS petitioner's motion, [DE #93], and hereby DISMISSES WITHOUT PREJUDICE petitioner's claims against respondent, [DE #71]. All other pending, related motions are deemed MOOT. [DE #89]. To the extent petitioner requests the court to reduce his sentence in an unrelated motion, [DE #83], under 18 U.S.C. § 3742(e) as applied in Pepper v. United States, 562 U.S. 476 (2011), the court notes the Supreme Court in that case held a district court at resentencing may consider evidence of defendant's post-sentencing rehabilitation as a factor supporting a downward variance. Petitioner is not before the court for resentencing and has not provided a basis for a reduction in his sentence pursuant to 18 U.S.C. § 3742(e). Therefore, his motion for reconsideration, [DE #83], is DENIED. The clerk is directed to close this case.

This 17th day of December 2018.


MALCOLM J. HOWARD
Senior United States District Judge

At Greenville, NC
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